IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18-01-2002

CORAM :

THE HONOURABLE MR. JUSTICE A. KULASEKARAN

W.P. No. 2337 of 1996

1. G. Thilagam
2. N. Vathsala
3. K. Pakkiyam
4. M. Pappathi
5. Palaniammal
6. P. Meera
7. M. Loganayaki
8. J. Indira
9. P. Lakshmi ... Petitioners

Versus

1. The Presiding Officer
Labour Court
Salem

2. The Special Commissioner
Consumer Co-operative Wholesale
Stores, Salem ... Respondents

Petition under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus as stated therein.

For Petitioners : Mr. D. Hariparanthaman
For Respondents : Mr. M.R. Raghavan

: ORDER

The petitioners have come forward with this writ petition for a Writ of Certiorarified Mandamus to call for the records relating to I.D. Nos. 180 to 188 of 1992 and to quash the common award dated 24-03-199 4 passed by the first respondent and to direct the 2nd respondent to reinstate the petitioners herein with continuity of backwages and other benefits.

2. The case of the petitioners are that the 2nd respondent/ Management had 23 retail outlet for which the entire packing and distribution systems were done at the head office of the 2nd respondent herein. Ponni Supermarket is one of the retail outlets of the 2nd respondent. The petitioners were employed in the 2nd respondent/Management for a period of 7,

12, 8, 5, 10, 3, 7, 9 and 9 years respectively for a meagre wages of Rs.5/- per day and were working continuously as the nature of work assigned to them was permanent. On 12-04-1989, the Inspector of Labour appointed under the minimum Wages Act inspected the 2 nd respondent's office and recorded the statement from the petitioners and others in respect of their salary and service conditions. Immediately on 07-06-1989, the 2nd respondent has orally terminated the services of the petitioners without assigning any reason knowing the fact that they have completed 480 days in first two years of their service. The petitioners were not given any compensation as stipulated under Sec. 25 (f) of the Industrial Disputes Act. The petitioners have approached the Labour Commissioner (Conciliation)Salem under Sec. 2 A of the Act. During the conciliation,the 2nd respondent/Management had agreed to reinstate the petitioner, however, later the 2nd respondent strangely took a plea that the petitioners were not their employees, in the result, the conciliation became vain. Thereafter, the petitioners approached the 1st respondent by

filing separate I.D.s. and joint trial was conducted. However, the labour court dismissed their I.D.s. Hence, the petitioners have come forward with this common writ petition.

3. The case of the 2nd respondent is that altogether 17 persons have raised Industrial Dispute alleging that they were employed for prepacking work in the Ponni Supermarket, which were contested by the 2 nd respondent/Management before the Conciliation Officer by filing necessary reply. In the conciliation proceeding, the Secretary of the 2 nd respondent has not signed any undertaking promising to reinstate the petitioners. Since the conciliation ended in failure, the petitioners have filed I.D.s before the labour court. The labour court after careful consideration of the oral and documentary evidence has rejected the claim of the petitioners. The averment that the Management has agreed to reinstate the petitioners is not true. The document namely W6 and W8 were considered by the labour court and orders were passed rejecting the claim of the petitioners herein.

4. The learned counsel appearing for the petitioners Mr. Hari Paranthaman argued that Ex.W6 is the report of the labour inspector relating to his inspection on 12-04-1989, which contains the name of the petitioners and others. Ex.W8 is the minutes of the Conciliation Officer wherein the 2nd respondent has agreed to reinstate the petitioners, but later the 2nd respondent has deviated by alleging that the petitioners were not their employees. The labour court rejected these document on the ground that the author of the documents were not examined by the petitioners. The labour court further held that if the said documents were really in existence the same would have been filed before the labour Commissioner and as such the labour court refused to give credence to it. The said document Ex.W6 was addressed to one Mani, Secretary, CITU, Salem. MW1 has also deposed before the labour court that the copy of Ex.W6 was not served on them by the authorities. The learned counsel for the petitioners brought to the notice of this Court that the Management has not denied the inspection made by the labour inspector on 12-04-1989. The learned counsel for the petitioners pointed out Ex.M8 in support of his contention that the 2nd respondent has originally agreed to reinstate the petitioners, later departed from their

stand by making false averments that the petitioners were not their employees, that the rejection of Exs. W6 and W8 on the ground that the authors were not examined by strictly following Indian Evidence Act is unsustainable in Law.

5. The learned counsel appearing for the 2nd respondent opposed the writ petition by arguing that nowhere the Management has signed any document, though the signatures of the workman was available there.

6. The learned counsel appearing for the petitioners relied on the following decisions in support of his case.

i) 1977 LAB I.C. 845 (SC) 845 (State of Haryana and another Vs. Rattan Singh) wherein in Para-4 it was held as follows:-

"4. It is well settled that in a domestic enquiry the strict and sophisticated rules of evidence, under the Indian Evidence Act may not apply. All materials which are logically probative for a prudent mind are permissible. There is no allergy to hearsay evidence provided it has reasonable nexus and credibility. It is true that departmental authorities and administrative tribunals must be careful in evaluating such material and should not glibly swallow what is strictly speaking not relevant under the Indian Evidence Act. For this proposition, it is nto necessary to cite decisions nor text books, although we have been taken through case law and other authorities by counsel on both sides. The essence of a judicial approach is objectivity, exclusion of extraneous materials or considerations and observance of rules of natural justice. Of course, fairplay is the basis and if perversity or arbitrariness, bias or surrender of independence judgment vitiate the conclusions reached, such finding, even though of a domestic tribunal cannot be held good. However, the courts below misdirected

themselves, perhaps, in insisting that passengers who had come in and gone out should be chased and brought before the tribunal before a valid finding could be recorded....."

ii) In FJR 2001 Madras 291 (S. Murugesan Vs. First Additional Labour Court and another) it has been held thus:-

".... In the first case while dismissing the case the judges of the Supreme Court of India realizing the difficulties of both the Management as well as the workmen, went on to hold that it is a problem of humanist justice and that every proposal must be bottomed on the basis economic fact that the beneficiaries are from the many below the destitution line...."

"In industrial law, interpreted and applied in the perspective of Part IV of the Constitution, the benefit of reasonable doubt on law and facts, if there be such doubt, must go to the weaker section, labour. The Tribunal will dispose of the case making this compassionate approach but without over-stepping the proved facts....."

ii) W.P. No. 11916 of 1994 Order dated 02-07-2001 (Kattabomman Transport Corporation Limited, rep. by its Managing Director, Tirunelveli Vs. The Presiding Officer, Labour Court, Tirunelveli and another) wherein in Para-2 it has been held thus:-

"2. My attention was invited to the decision of this Court in M/s. Shining Tailors Vs. Industrial Tribunal II, U.P. reported in 1983 (II) LLJ, 413 wherein it is held that the Court should be very cautious that every piece-rated workman is not an independent contractor and that piece-rated payment meaning thereby payment corelated to production is a well recognized mode of payment to industrial workman. To satisfy the status of workmen, it is immaterial whether he contributes labour to produce goods or renders service as piece-rated workmen, once it is satisfied that the Management availed the service of workman, either on regular basis or on piece-rated basis. The above view was also supported by a decision of a Division Bench of this Court in Management of Indian Bank Vs. P.O. Industrial Tribunal (C) and another reported in 1990 (I) LLJ 50. Following the said decisions, I dismissed a similar writ petition filed by the petitioner corporation by order dated 20-04-2001 made in W.P. No. 12594 of 1994."

7. Before the labour court, the petitioners have filed Ex.W1 to W8 and examined one Meera as WW1 and the Management has marked Ex.M1 to M4 and examined one Rengarajan as MW1. The learned counsel appearing for the 2nd respondent/Management has filed typeset of papers which contain note file dated 19-07-1989 and also copy of the counter dated 29-05-1990 filed by the 2nd respondent before the labour court. Ex.M1 to M3 are attendance registers and Ex.M4 is the pay register wherein the name of the petitioners did not find place. The 2nd respondent also disputed that the petitioners were employed under him and pointed out the inconsistent stand that they have claimed themselves as employees of Ponni Supermarket, which is evident in Ex.W4, later before the labour court they alleged that they are employed under the 2nd respondent herein.

8. The labour court rejected Exs. W6 and W8 on the basis that the authors of the said documenmts were not examined. The learned counsel for the petitioners pointed out that the petitioners were employed continuously for a period of several years and the work assigned to them is also permanent in nature, strict application of Indian Evidence Act is not necessary in so far as the proceedings before the labour court are concerned. Ex.W6 and W8 are the documents of labour inspector, Salem and labour Officer, Salem respectively are touching the service of the petitioners in the 2nd respondent concern. It is evident under Ex.W6 that the inspection was made by the labour inspector on 12-04-1989. On application made by one S. Mani, Secretary, CITU, Salem, the certified copy of the same was issued duly signed by the said inspector on 23-08-1989. Similarly, it is seen in Ex.W8 that on an application dated 23-09-1989 made by the above said Mani, the certified copy of the minutes dated 10-07-1989 and 19-07-1989 was issued duly signed by the labour officer on 20-09-1989. In Ex.W6, it is found that the labour inspector has inspected the 2nd respondent's unit on 12-04-1989 at about 9.40 a.m. and found that about 23 employees were working, the petitioners names, length of se rvice and salary were found place in Sl.Nos. 7, 9, 10, 11, 13, 14, 16, 19,

and 21. The respondent has not denied the inspection made by the labour inspector on the particular date, however, they denied the petitioners were not their employees. In Ex.W8, the minutes of the labour officer dated 10-07 -1989 and 19-07-1989. It is seen in the said minutes dated 10-07-198 9 the special officer of the 2nd respondent contacted over telephone and he agreed to reinstate the petitioners and called upon them to join duty from 11-07-1989, but the petitioner's representative insisted upon written agreement before joining duty as a result the 2nd respondent representative sought for an adjournment to consult their legal advisor, ultimately the case was adjourned to 19-07-1989 at 11.00 a.m. On 19-07-1989, after hearing both sides the labour officer made an endorsement stating that the petitioners were advised to join duty 21.07.1989 as Management has agreed to take back the petitioners. It is true that the Management representative has not signed in the said minutes. The copy of a note file was produced by the counsel for the 2nd respondent which indeed corroborates contents of W8 that the telephonic conversation of the labour officer with the special officer of the 2nd respondent, who has agreed to take back the workers as contractual labourers.

9. After careful reading of the note file, I am of the firm view Exs. W6 and W8 are conclusive and valid documents to prove that the petitioners were employed under the 2nd respondent for the more than 480 days. The reasons assigned by the labour court for rejecting the said document was thoroughly incorrect. Both Exs. W6 and W8 are all self-explanatory and no further or additional evidence is required. It is well settled that even the benefit of reasonable doubt on law and on facts if there be must go to the weaker sections namely workers. The labour court while dispose of the case s hall make this compassionate approach but without over-stepping the proved facts. The essence of judicial approach is objectivity exclusion of extraneous materials or considerations and observance of rules of natural justice. Before parting with the judgment, I also keep in mind that the Hon'ble Supreme Court, consistently held and accepted that strict rules of evidence are not applicable to the proceedings before the labour court, but only the rules of natural justice are to be followed. No one can forget the dictum laid by the Apex Court "there is no allergic to hearsay evidence provided it has reasonable nexus and credibility". The labour court has committed a grave mistake in dismissing the I.Ds filed by the petitioners herein.

10. Considering the over all facts and circumstance the case, I am of the view that the common award passed by the labour court in I.D. Nos. 180 to 188 of 1992 dated 24-03-1994 is liable to be quashed and accordingly quashed. However, considering that the 2nd respondent is a Co-operative Unit, I feel it is just and necessary to direct the 2 nd respondent to reinstate the petitioners within two months from the date of receipt of a copy of this order with continuity of service from their date of appointment, along with 25% of backwages.

11. In the result, this writ petition is allowed to the extent indicated above. No costs. Consequently, connected WMP is closed.

18-01-2002

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